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Before the
Federal Communications Commission
Washington, DC 20554

SEP 19 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of the Petition of the)
Public Utilities Commission, State of)
Hawaii for the Authority to Extend its)
Rate Regulation of Commercial Mobile)
Radio Services in the State of Hawaii)

PR 94-103
PR File No. 94-SP1

COMMENT OF GTE SERVICE CORPORATION ON BEHALF OF
GTE MOBILNET OF HAWAII INCORPORATED
AND GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED
IN OPPOSITION TO THE PETITION OF THE
PUBLIC UTILITIES COMMISSION, STATE OF HAWAII
FOR AUTHORITY TO EXTEND ITS RATE REGULATION
OF COMMERCIAL MOBILE RADIO SERVICES IN THE STATE OF HAWAII

GTE SERVICE CORPORATION
ON BEHALF OF ITS TELEPHONE
AND PERSONAL COMMUNICATIONS
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SUMMARY

These Comments of GTE Service Corporation ("GTE") are submitted on behalf of two of its affiliates, GTE Mobilnet of Hawaii Incorporated and GTE Hawaiian Telephone Company Incorporated, which provide cellular and IMTS/paging services, respectively, in the state of Hawaii. GTE strongly opposes the Hawaii Public Utilities Commission's Petition to continue its regulatory authority over CMRS rates.

The current regime of rate regulation is burdensome and time-consuming. At a minimum, most rate or service offerings are delayed 30 days before they can go into effect. Not infrequently, competing carriers file obstructive protests to proposed rates or services in order to delay introduction of new and attractive

offerings. Such protests often delay the introduction of new offerings by a year or more with very little, if any, public benefit. Rate regulation in its present form is therefore counterproductive.

The new regulatory scheme established by Congress in the Omnibus Budget Reconciliation Act was intended to preempt state regulation of CMRS rates, thereby establishing a consistent national policy for CMRS rate regulation. In furtherance of this policy, the FCC has already determined, based on its review of pertinent data, that the CMRS market is sufficiently competitive to justify forbearance from rate regulation at the federal level. If the FCC were to grant the Hawaii Petition, it would necessitate a revision of its earlier findings about the state of competition in this market.

In order to overcome the very strong Congressional preference for federal preemption, a state must make a compelling showing that market conditions in that state are inadequate to protect subscribers from unjust or unreasonable rates. The test is a heavy one which can only be met by the submission of a strong showing regarding the character of the market itself and specific problems which the market conditions have created or are likely to create. Hawaii has not met this burden.

1. The State acknowledges that it is uncertain at this time whether CMRS rates in Hawaii are unjust or unreasonable. It is conducting a docketed investigation to consider such questions, among others. In the absence of any current findings that rates

are unjust or unreasonable, however, the State's Petition is premature.

2. ESMR service, among others, was not regulated in Hawaii in June, 1993. Hence, it is possible that such services, while competitive with other CMRS services, would not be subject to regulation in Hawaii while cellular and other more traditional mobile services remain regulated. Such a result would run directly counter to the policy of establishing a level playing field for all CMRS providers which is inherent in the new Congressional scheme.

3. Hawaii has not submitted complete market information. Its Petition mentions only five cellular carriers and three paging carriers, ignoring at least one paging carrier (a GTE affiliate) and all providers of IMTS service. In addition, no consideration is given to either SMR providers or prospective PCS providers. Thus the FCC has only been provided with a very limited perspective on the full CMRS market picture.

4. The minimal data submitted by Hawaii is not appropriate and does not, in any event, justify its concerns. Hawaii used a faulty and incomplete method of calculating rate of return, excluding important elements. Moreover, even the accounting rates of return calculated by Hawaii are themselves very reasonable, particularly when the many preceding years of losses are taken into account.

5. Data submitted by GTE demonstrates that cellular rates in Hawaii have actually decreased, in real terms, from 1989 through the present over a broad spectrum of usage patterns. In

this same time period cellular coverage has expanded dramatically to cover virtually all of Hawaii. In addition, rate plans designed to better accommodate the specific needs of customers have proliferated.

6. The absence of complaints by subscribers or consumers in Hawaii further suggests that the market is working well to make carriers responsive to customer needs.

For all of these reasons, GTE submits that there is no demonstrated failure of market conditions in Hawaii and therefore, in keeping with the clear mandate of Congress, the Hawaii PUC's Petition should be dismissed or denied.

I. Introduction

GTE Service Corporation ("GTE"), on behalf of its affiliates, GTE Mobilnet of Hawaii Incorporated ("GTE Mobilnet") and GTE Hawaiian Telephone Company Incorporated ("HTC") hereby submits these Comments in Opposition to the Petition of the Public Utilities Commission of the State of Hawaii ("HPUC") to continue rate regulation. GTE Mobilnet is the licensee in the Honolulu MSA, as well as the RSAs of Hawaii 1 - Kauai, Hawaii 2 - Maui and Hawaii 3 - Hawaii. GTE Mobilnet therefore provides cellular service throughout the State of Hawaii. HTC's primary business is the provision of landline telephone service throughout the State of Hawaii. In addition, HTC provides paging and Improved Mobile Telephone Service ("IMTS") in Hawaii, services which are currently

subject to state rate regulation. Continued rate regulation by the HPUC will directly affect GTE Mobilnet and HTC.

The Petition filed by the HPUC proposes to continue its authority to exercise the full panoply of rate regulation which now prevails in Hawaii. The HPUC seeks this continuation at least until the conclusion of an examination which it is currently conducting of the infrastructure of communications technologies and services in Hawaii. The HPUC states that it is uncertain at this point whether the initial approved rates for Commercial Mobile Radio Service ("CMRS") providers are just and reasonable. GTE requests, for the reasons set forth below, that the HPUC's Petition be dismissed or, in the alternative denied, for failure to satisfy the demanding standards which the FCC set forth in Section 20.13 of its rules. 47 C.F.R. § 20.13.

A. Current Regulation of CMRS.

The State of Hawaii currently imposes a burdensome form of rate regulation on CMRS providers. All rates must be filed with and approved by the HPUC. Rates typically become effective on no less than 30 days notice. If the tariff filings are protested, which is not uncommon, the tariff usually does not become effective until the HPUC conducts an investigation, holds a hearing, and issues a decision. Not only is this process costly, but often as much as a year goes by before a new rate plan or service can be offered. Significantly, protests against new rate plans or new

services have often been filed not by aggrieved consumers but by competitors who are concerned about the potential competitive threat posed by the new rate or offering. These are precisely the circumstances that drove the FCC to forbear from requiring tariff filings at the federal level. Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1479 (1994) ("Second Report and Order").

A few recent examples will illustrate how competitors have abused the regulatory process to slow down or stifle the workings of the competitive marketplace, as set forth below.

1. Introduction of New Rate Plans.

On June 3, 1991, GTE Mobilnet filed an application seeking approval of five new rate plans. Honolulu Cellular Telephone Company ("HCTC"), a competing service provider, formally protested the application. The proposed tariff changes were suspended and an investigation ordered. GTE Mobilnet entered into discussions with the parties in an attempt to speed introduction and to reach a mutually acceptable resolution of the matter. The parties generally agreed that four of the five plans were comparable to existing rate plans. Opposition to these four plans was then withdrawn, and the Commission authorized the four rate plans on October 16, 1992, some sixteen months after the tariff application was originally filed. GTE Mobilnet subsequently

withdrew the remaining contested multi-user rate plan, which would have resulted in lower end-user rates.

2. Innovative Service Offerings.

a. Data Transmission Services.

On July 8, 1992, GTE Mobilnet filed an application for approval of a tariff to provide UPS with data transmission service using cellular technology. The service enables UPS to track the pick-up and delivery of UPS packages more efficiently.

RAM Mobile Data ("RAM"), which is a private wireless data provider affiliated with HCTC, filed a protest claiming discrimination between voice and data customers. The proposed tariff changes were suspended and an investigation ordered. In the course of attempting to reach a stipulation with respect to a schedule of proceedings, GTE Mobilnet decided to withdraw its application on August 5, 1993.

b. Calling Party Pays.

On February 23, 1993, GTE Mobilnet filed an application for approval to offer "Calling Party Pays" ("CPP") service on a trial basis. GTE Mobilnet proposed that as part of CPP, HTC would provide billing and collection under contract. HCTC filed a protest to this application taking the position that unless HTC offered a billing and collection agreement that was acceptable to

HCTC, GTE Mobilnet should not be allowed to offer CPP. The Consumer Advocate also filed a similar protest. The HPUC suspended GTE Mobilnet's application and ordered an investigation. The Consumer Advocate subsequently recommended approval of the new service plan subject to certain conditions. A hearing was held on January 10-11, 1994, but a decision approving GTEM's CPP was not issued until September 6, 1994.^{1/}

On December 7, 1993, nearly nine months after GTE Mobilnet filed its Application, HCTC filed an application to offer its own version of CPP. HCTC requested that the Commission approve its CPP application prior to the hearing on GTE Mobilnet's CPP Application. HCTC's filing was set for investigation but subsequently withdrawn.

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While the Hawaii PUC is well-meaning, their approach to rate regulation of CMRS is far more characteristic of a monopoly environment rather than the competitive market which actually prevails in Hawaii. As the above examples indicate, the regulatory process, with its accompanying regulatory lag and notification of plans to competitors, has actually served to stifle competition and to prevent or delay the introduction of new service offerings.

^{1/} On or about April 1994, it was announced that two of the Commissioners would be leaving the HPUC. One Commissioner would be leaving within the month and the other would be retiring as of June 30, 1994. Although the HPUC informed GTE Mobilnet that it would be rendering a decision and order on GTE Mobilnet's CPP application by the end of May 1994, it did not do so by that time or by June 30, 1994 when the second Commissioner retired. The issuance of a decision and order was further delayed because the remaining Commissioner could not issue a decision and order on his own.

Against this important backdrop, GTE believes that continuation of this regulatory scheme is not in the public interest.

II. Congress Intended for the Federal Communications Commission to be the Sole Regulator of Rates Associated with the Provision of Commercial Mobile Radio Services.

Analysis of the HPUC's Petition must begin from the premise that Congress expressed an overwhelming preference for federal preemption of state regulation of rates and market entry. Specifically, Section 332(c)(3)(A) of the Omnibus Budget Reconciliation Act of 1993 ("OBR") states:

Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a state from regulating the other terms and conditions of commercial mobile service.

47 U.S.C. §332(c)(3)(A)

This language expresses Congress' strong determination that the federal government, and hence the FCC, should be solely responsible for market entry and rate regulation in the CMRS market.

The legislative history of the OBR offers further support that Congress intended for the FCC to be the sole source of all CMRS rate and market entry regulation. Congress sought to ensure that all similar services throughout the country are accorded similar regulatory treatment. H.R. No. 2264, Conf. Rep. 213, 103d

Cong. 1st Sess. p. 494 (1993). Obviously, the only way to ensure a uniform national market structure, and thereby comply with Congressional intent, is for the federal government to establish a national regulatory framework for wireless services. Each state implementing its own regulations will necessarily result in a crazy-quilt approach to rate regulation.

Under the Constitution's Supremacy Clause, Congress has the power to supersede state law. U.S. Constitution, art. VI. The Supreme Court has interpreted the Supremacy clause as allowing federal law to prevail at the expense of invalidating state regulations when a federal and state law conflict, and cannot be reconciled. Louisiana Public Service Commission v. F.C.C., 476 U.S. 355, 368 (1986). Federal and state laws may conflict in a number of circumstances including instances where Congress legislated comprehensively and thus expressed an intent to be the sole regulator of a topic, or where state law frustrates Congress' intent. Id. at 368-369.

In the area of cellular rate and market entry regulation, Congress expressed a clear intention that the federal government have sole regulatory authority except in very limited cases. 47 U.S.C. § 332(c)(3)(A); see also Second Report and Order, 9 FCC Rcd. 1411, 1418 (1994). The OBR declares that states may petition the FCC for authority to regulate rates either to continue rate regulation in effect prior to June 1, 1993 or to begin rate regulation of the CMRS market. The OBR, however, creates high standards for a state to meet before authority to regulate will be

granted. To be successful in either circumstance, a state must demonstrate either that:

- (i) market conditions with respect to such [CMRS] services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or
- (ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State

47 U.S.C. §332(c)(3)(A)(i) - (ii).

If the state can meet one of these requirements, the FCC may authorize the regulation, but only to the extent necessary to maintain just and reasonable rates or avoid unjust or unreasonably discriminatory rates. 47 U.S.C. §332(c)(3)(A)

III. The FCC has Already Determined that Market Conditions Do Not Justify Rate Regulation.

The FCC was charged with a mandate from Congress to establish a national cellular telecommunications policy, necessarily undertaking its own evaluation of the cellular market. In implementing this charge, the FCC determined that the proper amount of regulation for the cellular market should be a forbearance from regulation on market entry. Second Report and Order at 1510-1511. The FCC further concluded that the cellular marketplace was sufficiently competitive to forbear from tariff

filings. Id. at 1478.^{2/} While the FCC believed that further inquiry into the competitiveness of the cellular market is warranted, it plainly found, based on the data and analysis in the record, that there is "some competition" in the cellular marketplace. Id., at 1472. The level of competition was sufficient for the FCC to conclude that no tariff regulation was necessary at the federal level. Id. at 1478. This finding echoed Congress' determination that the cellular market need not be heavily regulated. Id. at 1418.

The decision to abstain from regulation rested on the FCC's tentative finding that the level of competition in the commercial mobile radio services marketplace is sufficient to permit forbearance from tariff regulation of the rates for CMRS provided to end users. In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, 8 FCC Rcd 7988, 8000 (1993) (NPRM); Second Report and Order at 1478. The Commission found that a combination of emerging technologies, such as PCS, cellular, paging and specialized mobile service carriers, will compete with each other for acceptance in the market. Second Report and Order, at 1468-1470. The FCC found support for its conclusion in the fact that a large majority of states do not regulate cellular rates. NPRM at 8000.

^{2/} The FCC's 2nd R&O did not alter the obligations imposed upon carriers pursuant to the Telephone Operator Consumer Services Improvement Act of 1990. See, In the Matter of Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd. 2744 (1991).

The FCC further found that forbearance, in this instance, would benefit the public interest because tariffs (and their associated notice periods) reduce a CMRS provider's ability to react quickly to changes in the market, and add significantly to the costs of providing service. Tariffs also reduce CMRS providers' incentive to provide new services or reduce prices for current services. Second Report and Order at 1479. Additionally, a market without tariff filing obligations enhances competition, and this ultimately benefits consumers. Id. ^{3/}

It would be highly anomalous for the FCC, after having made its own findings about the sufficiency of competition to justify forbearance, to now reach a diametrically opposite conclusion in order to grant the HPUC's Petition. To approve the instant Petition would, in effect, require a reopening of the entire issue of whether the federal forbearance policy is justified. Suffice it to say that the HPUC has offered no basis for undermining and reversing the Commission's earlier conclusions.

IV. Granting the HPUC's Petition Would Defy Congress' and the FCC's Intent and Regulations.

A. States Asking for Authority to Regulate CMRS Rates Must Submit Market Analysis Data in Their Petition and Meet a High Standard of Proof.

^{3/} It may be noted that the Commission indicated that its decision to forbear from requiring the filing of federal tariffs for interstate cellular service did not necessarily preclude the filing of tariffs for intrastate CMRS. Id. at 1480. However, the Commission's review and analysis of the CMRS marketplace was not limited to interstate services.

In a petition to regulate, a state must make a concrete showing that the CMRS market is not competitive or capable of producing just or reasonable rates. In fact, Section 20.13(a) of the FCC's rules requires that each petition show:

Demonstrative evidence that market conditions in the state for commercial mobile radio services do not adequately protect subscribers to such services from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. Alternatively, a state's petition may include demonstrative evidence showing that market conditions for commercial mobile radio services do not protect subscribers adequately from unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, and that a substantial portion of the commercial mobile radio service subscribers in the state or a specified geographic area have no alternatives [sic] means of obtaining basic telephone service. This showing may include evidence of the range of basic telephone service alternatives available to consumers in the state.

To meet this requirement, a state may submit the following evidence:

- (i) The number of commercial mobile radio service providers in the state, the types of services offered by commercial mobile radio service providers in the state, and the period of time that these providers have offered service in the state;
- (ii) The number of customers of each commercial mobile radio service provider in the state; trends in each provider's customer base during the most recent annual period or other data covering another reasonable period if annual data is unavailable; and annual revenues and rates of return for each commercial mobile service provider;
- (iii) Rate information for each commercial mobile radio service provider, including trends in each provider's rates during the most recent annual period or other data covering another reasonable period if annual data is unavailable;

- (iv) An assessment of the extent to which services offered by the commercial mobile radio service providers the state proposes to regulate are substitutable for services offered by carriers in the state;
- (v) Opportunities for new providers to enter into the provision of competing services, and an analysis of any barriers to such entry;
- (vi) Specific allegations of fact (supported by affidavit of person with personal knowledge) regarding anti-competitive or discriminatory practices or behavior by commercial mobile service providers in the state;
- (vii) Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjust or unreasonably discriminatory, imposed upon commercial mobile radio service subscribers. Such evidence should include an examination of the relationship between rates and costs. Additionally, evidence of a pattern of such rates, that demonstrates the inability of the commercial mobile radio service marketplace in the state to produce reasonable rates through competitive forces will be considered especially probative; and
- (viii) Information regarding customer satisfaction or dissatisfaction with services offered by commercial mobile radio service providers, including statistics and other information about complaints filed with the state regulatory commission.

Id. This high standard implies the strong presumption in favor of preemption embedded in the OBR. To overturn that presumption, a state must present compelling evidence before it will be allowed to regulate the CMRS market and thus circumvent Congress' intent. Granting a state's petition to regulate also places the FCC in the precarious position of admitting that Congress' findings and its own studies on cellular market competition were wrong or

inaccurate. Therefore, the FCC should demand strict compliance with its evidentiary requests before it grants a petition.

B. The HPUC's Petition Does Not Satisfy the Requirements of the FCC's Regulations.

The HPUC's submission to the FCC fails to meet the specifications that the FCC requested when inviting states to submit petitions to continue or begin regulation of the CMRS market. Furthermore, the FCC requested specific market data in petitions for authority to continue rate regulation. The HPUC provides some market data, but it is incomplete and does not provide support for the assertions made by HPUC.

1. The HPUC Acknowledges That Currently Available Data Do Not Demonstrate the Insufficiency of Market Conditions.

The HPUC candidly admits that it is uncertain whether rates in the CMRS market are just and reasonable. In other words, the HPUC does not provide any information that indicates that market conditions for CMRS do not protect customers from unjust and unreasonable rates. At most, the HPUC merely asserts that its regulations exist and may need amendment in the future. From its petition, it is impossible to conclude that Hawaii market conditions meet the criteria that the FCC prescribed because the state does not demonstrate either that CMRS is replacing traditional land line telephone service or that rates are

unreasonable and unjust, or discriminatory in an unjust or unreasonable manner. The petition process was not established by Congress to preserve a state's regulatory power in the event regulation is needed at an indefinite point in the future. Rather, it was specifically intended to preserve state regulatory power where current market conditions justify a continued need for such authority. Since the State is uncertain at this time about the need for regulation, the HPUC's current petition is inappropriate and premature. In the absence of actual facts justifying a need for regulation, the HPUC's present petition must be denied.

2. The Congressional Preference for Regulatory Parity Requires the CMRS Market to Be Viewed as a Whole.

It is not entirely clear from the Second Report and Order or from the OBR whether Congress and the Commission intended for states that successfully meet the requirements of Section 20.13(a) to be able to regulate rates of one CMRS provider but not another. Certainly that possibility runs contrary to Congress' and the FCC's stated goal of achieving regulatory parity -- the fabled "level playing field" -- which all policy makers support. Second Report and Order, para. 1418. By authorizing the Commission to arrive at a broader and more comprehensive definition of "commercial mobile radio service" providers than had been the case in the past, Congress made possible the erasure of artificial regulatory distinctions which have distorted market operations in the past.

Thus, GTE strongly suggests that similar CMRS markets must be viewed in total and either regulated or not regulated as appropriate. A piecemeal, patchwork approach can only prolong the very inequity which Congress sought to eliminate. And to address the circumstance of the CMRS market as a whole, as noted above, it is not only necessary to have a complete roster of the players but accurate data about the various submarkets.

Of particular importance here is the incipient entry of Enhanced Specialized Mobile Radio providers ("ESMRs") into the CMRS marketplace. Some observers have taken the position that a state such as Hawaii which engaged in rate and entry regulation in the past is precluded from such regulation of ESMR. This is so because Section 332(c)(3)(B) of the OBR only permits continuation of authority to regulate rates for CMRS services "offered in such State" as of June 1, 1993. Thus, because ESMR was not "offered" in Hawaii in June, 1993, Hawaii could not regulate it now even if its regulatory authority were continued by the FCC. While it is unclear whether Congress intended that new entrants be excluded from all continuing regulation by states that have regulated in the past, it is clear that such a result would create an enormous regulatory disparity between ESMR and cellular. The FCC has envisioned ESMR as a competitor for, and alternative to, cellular service. Second Report and Order at 1451. To permit ESMR to operate unfettered and unregulated in Hawaii while cellular and other CMRS services remain subject to regulation would be a gross inequity that would largely defeat the goal which Congress and the

FCC have tried to foster.

3. The HPUC's Description of the CMRS Market Is Incomplete.

The HPUC fails to meet the threshold inquiry of proving either that the market is failing to protect customers from unjust or unreasonable rates or that rates are unjustly or unreasonably discriminatory; or that CMRS service is a replacement for land line telephone service in the Hawaii markets. The FCC placed utmost importance on this evidentiary showing by stating that proof of inadequate market conditions or market replacement was necessary before considering a petition to regulate rates.

The HPUC provides some sketchy information about the CMRS market, but it is clearly incomplete. The HPUC's petition lists the five cellular carriers and only three paging companies that operate in the state. HTC, which was not mentioned by the HPUC, also provides paging service in Hawaii. In addition, HTC provides two-way IMTS in Hawaii. Certain of the other radio common carriers ("RCCs") whom the HPUC described as providing only paging services also provide IMTS. The HPUC makes no mention whatsoever of private carriers in the state, although FCC records disclose at least 288 SMR licensees (both trunked and conventional) in Hawaii. Nor does the HPUC mention RAM Mobile Data, which has protested GTE Mobilnet's filings as indicated above. These carriers are obviously now recognized in most cases as an integral part of the CMRS marketplace. Second Report and Order, at 1450, 1508, 1510.

Nor does the HPUC address the incipient PCS industry, which will have a major impact on the CMRS marketplace. Thus, the Commission has not been apprised of the full universe of players in the CMRS field. Without a complete and accurate picture of the CMRS market in Hawaii, the FCC cannot possibly reach defensible conclusions about the need for regulating that market.

**4. The Minimal Data Submitted by the HPUC
Do Not Support Its Conclusions.**

In addition to not supplying a comprehensive or accurate depiction of the carriers in Hawaii, the HPUC has either not supplied any data for the pertinent submarkets or supplied data which actually belie its conclusions. As has been noted above, the HPUC did not even acknowledge the existence of non-cellular two-way providers in Hawaii, much less supply any market data regarding their operations. Obviously, the Commission cannot justify continued regulation of those services.

The HPUC did cursorily address the paging and cellular markets in data attached to its Petition. As noted above, the paging data fails to include a major paging provider, HTC. But equally important, the data (a) is erroneously evaluated and (b) does not, in any case, support the concerns which the HPUC has expressed.

The HPUC seems primarily concerned about the increase in revenues and the "substantial increase" in the rate of return in recent years. (Petition, at ¶ 6). It seems to base its

conclusions largely on the increasing revenues and increasing "pretax rates of return on net plant and equipment" of cellular carriers. (See Attachment 1 to Petition). There are two primary problems with this approach. Assuming that using an accounting rate of return is appropriate at all, using a "pre-tax" rate of return is obviously misleading since taxes are in fact a significant cost of doing business and as such are customarily included in regulatory evaluations of accounting rates of return when such analysis is relevant. (See, 47 C.F.R. § 65.450 and Uniform System of Accounts §§ 32.7200-7250). Moreover, by calculating the rate of return using pretax net operating income, the HPUC also excludes the significant cost of capital, a customary component in any meaningful return analysis. Thus, the conclusions which the HPUC reaches are not based on meaningful, customary, and necessary rate of return components.

Perhaps more importantly, though, even these flawed conclusions fail to justify the HPUC's concerns. The data submitted by the HPUC does show increasing revenues from 1991 to 1993. That circumstance in itself is not of concern since it reflects the large growth in subscribership stimulated by the heavy investment in plant made by the cellular carriers to increase and improve coverage and the increasing acceptance of cellular (and CMRS generally) by the public. The deeper HPUC concern seems to be that rates of return are excessive, suggesting that rates are perhaps too high. The HPUC's own figures, however, reveal otherwise.

In the case of cellular, the HPUC acknowledges in passing that the cellular industry required an enormous capital investment and consequently experienced substantial initial losses. The HPUC notes that in the largest cellular market in Hawaii, Oahu, GTE Mobilnet had negative accounting rates of return (as calculated by the HPUC) from 1986 until 1993, when it finally experienced a modest 13.8% return. In the RSAs of Maui, Hawaii and Kauai, the HPUC's figures for GTE Mobilnet show rates of return of 5.56%, -19.75%, and -7.75%, respectively. The HPUC's concerns are borne out even less by the other market participants' figures. Certainly even if reliance on these returns were appropriate, there is no basis whatsoever to conclude that rates have been excessive or that continued regulation of rates is warranted.

Indeed, the graphs attached hereto as Attachments 1 - 3 show quite dramatically that rates for a typical GTE Mobilnet cellular customer in Hawaii across a broad spectrum of rate plans have actually gone down since 1989. These graphs reflect that real prices, i.e., adjusted for inflation, have decreased 19.7%, 21% and 25% for 30, 160 and 250 minutes of use, respectively. Furthermore, the HPUC's concerns about whether initial market driven rates are just and reasonable appear moot due to subsequent price changes. At the same time, cellular coverage has expanded to include virtually the entire State of Hawaii. Eleven new cell sites were recently added by GTE Mobilnet in an effort to improve coverage even further.

GTE has also continuously adapted its rate plans to fit